

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF
ATTORNEY GENERAL

RAYMOND A. HINTZE
Chief Deputy

Protecting Utah • Protecting You

KIRK TORGENSEN
Chief Deputy

September 28, 2006

Dianne R. Nielson
Executive Director
Utah Department of Environmental Quality
168 North 1950 West
P.O. Box 144810
Salt Lake City, UT 84114-4810

Re: Appointment of Air Quality Staff During Executive Secretary's Temporary Absences

Dear Executive Director Nielson:

With the administrative duties incumbent on the Executive Secretary of the Utah Air Quality Board, on occasion the Executive Secretary is unable to be present to perform his responsibilities. Consequently, the Division of Air Quality (DAQ) would benefit from the appointment of another DAQ staff member to exercise temporarily the Executive Secretary's authority. I have outlined below the legal authority that I believe supports this approach to carrying forward the Division's responsibilities.

The Executive Director has authority to ensure that the Department of Environmental Quality accomplishes its mission to "provide effective, coordinated management of state environmental concerns" and "safeguard public health and quality of life by protecting and improving environmental quality" Utah Code Ann. § 19-1-102(2)-(3). In this position, the Executive Director oversees the Department's divisions and the Executive Secretaries of the environmental quality boards.

To assist in that endeavor, the Utah Conservation Act states that "[t]he executive secretary shall be appointed by the executive director, with the approval of the board, and shall serve under the administrative direction of the executive director." Utah Code Ann. § 19-2-107. Therefore, the Executive Secretary serves under the administrative direction of the Executive Director. The Executive Director also has the authority to "make policies not inconsistent with law for the internal administration and government of the department, [and] the conduct of its employees"

Due to personal or other matters, on occasion the Executive Secretary is unable to be present. To account for such instances, Executive Secretary Richard Sprott requests that the Board appoint Cheryl Heying (DAQ Planning Branch Manager) to act as Executive Secretary in his absence. The authority to "make policies . . . for the internal administration of the department" extends to the appointment of Ms. Heying to exercise the Executive Secretary's authority on a temporary basis.

Executive Secretary Sprott also requests that this matter be placed as an action item on the November Air Quality Board meeting agenda, as the appointment will require the Air Quality Board's approval.

Should you have any questions, please do not hesitate to call me at (801) 536-4137.

Sincerely,



Christian C. Stephens
Assistant Attorney General

cc: . . . Richard Sprott, Executive Secretary, Utah Division of Air Quality
Fred G Nelson, Assistant Attorney General